

CHAPTER 5 - PURCHASE AND CONTRACT

SUBCHAPTER 5A - DIVISION OF PURCHASE AND CONTRACT

01 NCAC 05A .0101 RESPONSIBILITY

The Department of Administration is responsible for administering the State's program for the acquisition, management, and disposal of personal property, as well as the acquisition of services for its agencies. The Secretary of the Department of Administration (Secretary) is authorized and responsible for adopting and carrying out the rules promulgated herein. The administration of this program is delegated to the State Purchasing Officer (SPO) who reports to the Secretary.

*History Note: Authority G.S. 143-49;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987.*

01 NCAC 05A .0102 SCOPE

The program administered by the Division of Purchase and Contract shall be based on sound competitive purchasing procedures, sound management of personal property, and the economical disposal of State property; and shall include the following where public funds are involved:

- (1) acquisition of equipment, materials, and supplies, for all agencies;
- (2) acquisition of all printing, rentals, leases and services for all agencies, except for community colleges and local school administrative units;
- (3) making purchasing services available to non-state agencies identified in G.S. 143-49 and 143-49.1;
- (4) establishment and enforcement of purchase specifications;
- (5) inspection and testing of products;
- (6) review of agency purchasing and warehousing practices to ensure compliance with operating rules and procedures established by the SPO.

*History Note: Authority G.S. 143-49; 143-49.1; 143-53; 143-56; 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996; July 1, 1987.*

01 NCAC 05A .0103 ORGANIZATION

*History Note: Authority G.S. 143B-9; 143B-10;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. July 1, 1987.*

01 NCAC 05A .0104 LOCATION

The principal offices of the Division of Purchase and Contract are located in the Administration Building, 116 West Jones Street, Raleigh, N.C. 27603-8002.

*History Note: Authority G.S. 143B-10;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.*

01 NCAC 05A .0105 RULE-MAKING AUTHORITY

History Note: *Authority G.S. 143-53; 143-60;*
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. July 1, 1987.

01 NCAC 05A .0106 STANDARDIZATION COMMITTEE
01 NCAC 05A .0107 INSPECTION OF STANDARDS

History Note: *Authority G.S. 143-53; 143B-397; 143B-398;*
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1986.

01 NCAC 05A .0108 FORMS: PROCEDURES: TERMS AND CONDITIONS

The Division of Purchase and Contract establishes procedures for acquiring commodities, printing and services and prescribes forms, consistent language, terms and conditions and advertisement requirements, applicable to all agencies for such action. The procedures, forms, consistent language, terms and conditions and advertisement requirements shall be established taking into consideration market conditions and trends, legal requirements, and factors determined to be in the State's best interest. These shall be furnished to all agencies.

History Note: *Authority G.S. 143-51; 143-53; 143-55; 143-60;*
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; May 1, 1988.

01 NCAC 05A .0109 BOARD OF AWARD
01 NCAC 05A .0110 ADMINISTRATIVE PROCEDURES

History Note: *Authority G.S. 143-53; 150B-2; 150B-22; 150B-23;*
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. August 1, 1988; May 1, 1988; July 1, 1987;
Repealed Eff. February 1, 1996.

01 NCAC 05A .0111 INFLATION POLICY

History Note: *Authority G.S. 143-48; 143-49; 143-53;*
Eff. February 27, 1979;
Repealed Eff. June 1, 1986.

01 NCAC 05A .0112 DEFINITIONS

(a) For the purpose of this Chapter, agency is defined as all departments, institutions, boards, commissions, universities, or other units of the State (including the Division of Purchase and Contract), and community colleges and local school administrative units, unless specifically exempted herein by reference. For the purpose of identifying a special responsibility constituent institution, as designated by the University Board of Governors, just the name "university(ies)" shall be used to distinguish any differences in the rules.

(b) A service contract shall mean any agreement in which an independent contractor performs services requiring specialized knowledge, experience, expertise or similar capabilities for a state agency for compensation involving an expenditure of public funds. The services may include (by way of illustration, not limitation) services such as maintenance of buildings or equipment, auditing, film production, employee training and food services, provided that the service is not primarily for review, analysis or advice in formulating or implementing improvements in programs or services (in which case rules relating to consultants shall be applicable).

(c) Where the term "offer" is used, it refers to a bid, proposal or offer submitted in response to an Invitation for Bids, Request for Proposals, Negotiation, or Request for Quotations.

(d) For the purpose of this Chapter, commodity(ies) is defined as any equipment, materials or supplies. It does not include services or printing.

History Note: Authority G.S. 116-31.10; 143-49; 143-53; 143-53.1;
Eff. February 1, 1996;
Amended Eff. April 1, 1999.

SUBCHAPTER 5B - PURCHASE PROCEDURES

SECTION .0100 - REQUISITIONING

01 NCAC 05B .0101 PROCEDURE

Using agencies shall request quotation, bid and purchase actions of the Division of Purchase and Contract by means of electronic or written requests.

History Note: Authority G.S. 143-49; 143-51; 143-55;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.

01 NCAC 05B .0102 VERBAL REQUESTS

Verbal or other means of request are not satisfactory substitutes for electronic or written requests except in emergencies. Electronic or written confirmation must follow any such request made in an emergency situation.

History Note: Authority G.S. 143-49; 143-51; 143-55;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.

01 NCAC 05B .0103 CONFIDENTIALITY

All information and documentation relative to the development of a contractual document (Request for Quotation, Invitation for Bids, Request for Proposals, Waiver of Competition, Negotiation, etc.) for a proposed procurement or contract shall be deemed confidential in nature, except as deemed necessary by the purchaser to develop a complete contractual document. Such material shall remain confidential until the award of contract (See Rules .0210, .0309, .1501 and .1518 of this Subchapter).

History Note: Authority G.S. 133-33; 143-53; 143-60;

Eff. February 1, 1996.

SECTION .0200 - SPECIFICATIONS

01 NCAC 05B .0201 TYPES OF SPECIFICATIONS

There shall be two general types of purchase specifications. A standard specification shall be originated and developed by the Division of Purchase and Contract. It shall be comprehensive in nature and intended for repeated use. The other type of specification shall be originated by the user and modified as necessary to accomplish the intent of the rules of this Subchapter. Other type specifications may be used, including, but not limited to, "brand name or equal" or "brand specific".

*History Note: Authority G.S. 143-49(2); 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.*

01 NCAC 05B .0202 NEED

The Division of Purchase and Contract is authorized to inquire into the need for and the level of quality of the items and services requested.

*History Note: Authority G.S. 143-49(2); 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 05B .0203 DEVELOPMENT OF SPECIFICATIONS

(a) A standard specification is intended for general use, applicable insofar as practicable to the needs of agencies and kept current by the Division of Purchase and Contract. In formulating such a specification, advisory committees made up of personnel from various agencies and the private sector may be employed for advice and assistance. This type of specification may be offered also for the review and comments of manufacturers and suppliers who may participate in future bidding on the items in question.

(b) North Carolina's purchasing program shall be built on the principle of competition. Purchasers shall seek competitive offers, except as may be permitted by statute or rule, from qualified and responsible sources of supply. Where competition is available, every purchaser shall use/write specifications and requirements that are reasonable to satisfy the need, but not unduly restrictive, which shall encourage competition in the open market and result in the best possible contract for the commodity, printing or service needed.

*History Note: Authority G.S. 143-49(2); 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.*

01 NCAC 05B .0204 ARTICLES FOR SPECIAL PURPOSES

Where articles are to be used for educational or training purposes, by handicapped persons, or for test and evaluation or research purposes, special or overriding consideration may be given to the factor of suitability in the preparation of specifications, the evaluation of offers, for waiver of competition, and the award of contracts.

*History Note: Authority G.S. 143-49(2); 143-53;
Eff. February 1, 1976;*

*Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.*

01 NCAC 05B .0205 NORTH CAROLINA PRODUCTS

Where quality and availability allow, specifications are based on products grown or manufactured in North Carolina. This special interest in North Carolina products is intended to encourage and promote their use, but it is not exercised to the exclusion of other products or to prevent fair and open competition.

*History Note: Authority G.S. 143-49(2); 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 05B .0206 SUBMISSION FOR ADOPTION

Upon completion of all necessary studies, reviews and drafts, any proposed standard specification shall be submitted to the SPO for consideration. When a specification is adopted as a standard, it becomes applicable to agency purchases generally. A standard specification may be modified by the Division of Purchase and Contract on an interim basis as deemed necessary or advantageous until such time as the SPO can consider the proposed revision.

*History Note: Authority G.S. 143-49(2); 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987.*

01 NCAC 05B .0207 COPIES OF SPECIFICATIONS

Copies of standard specifications shall be distributed among interested bidders and in addition shall be available for public inspection at the Division of Purchase and Contract or through available electronic media. Copies of standard specifications may be provided interested parties.

*History Note: Authority G.S. 143-49(2); 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.*

01 NCAC 05B .0208 QUALIFIED PRODUCTS LIST

A qualified products list (QPL) is a type of specification which may be adopted as a standard by the Division of Purchase and Contract. The essential characteristic of this procedure is the examination and prequalification of brands and models of products on the basis of samples and tests. The prequalification limits offers to products included on the list (QPL). Manufacturers may submit products for evaluation and inclusion on the list. Sources for manufacturers are the Division's active bidder mailing lists, if available, and notifications of interest received in advance from other firms. The Division may impose a deadline for submission of samples. If a product is added to the list, it is then eligible to be offered in response to a solicitation document.

*History Note: Authority G.S. 143-49(2); 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.*

01 NCAC 05B .0209 ON-SITE INSPECTION OF GOODS

*History Note: Authority G.S. 143-49(2); 143-53; 143-49; 143-60; 143B-397; 143B-398;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.*

01 NCAC 05B .0210 CONFIDENTIALITY

All information and documentation relative to the development of a specification shall be deemed confidential in nature until the adoption of that specification or an award of contract if developed for a specific procurement or contract, whichever is later. (See Rules .0210, .0309, .1501 and .1518 of this Subchapter.)

*History Note: Authority G.S. 133-33; 143-53; 143-60;
Eff. February 1, 1996.*

SECTION .0300 - PROCUREMENT AUTHORIZATION AND PROCEDURES

01 NCAC 05B .0301 CONTRACTING REQUIREMENTS

Except where a waiver, special delegation, exemption, or an emergency purchase is permitted by rule, all purchases involving the expenditure of public funds made by universities and other agencies for commodities, services and printing, not covered by statewide term contracts, shall comply with the following delegations and procedures:

- (1) Small Purchases: A small purchase is defined as the purchase of commodities, services or printing, not covered by a term contract, involving an expenditure of public funds of five thousand dollars (\$5,000) or less. The executive officer of each agency, or his designee, shall set forth, in writing, purchasing procedures for making small purchases. The using agency shall award contracts for small purchases. The SPO may require a copy of the small purchase procedures be sent to the Division of Purchase and Contract.
- (2) Purchases Governed by General Delegation or Statute:
 - (a) For purchases made by a university or agency involving an expenditure of public funds over five thousand dollars (\$5,000), up to the benchmark established for a university under the provisions of G.S. 116-31.10, and up to the general delegation limit for agencies established by the SPO under the provisions of G.S. 143-53(a)(2):
 - (i) Competition shall be solicited;
 - (ii) Solicitation documents requesting or inviting offers shall be issued;
 - (iii) Solicitation documents shall include standard language, including terms and conditions as published by the Division of Purchase and Contract on its home web page, unless prior written approval is obtained from the Division for unusual requirements. If additional terms and conditions are used, they shall not conflict with the Division's standard terms and conditions, unless prior written approval is obtained from the Division for unusual requirements; and
 - (iv) Mailing lists, if available from the Division of Purchase and Contract, may be requested and used in addition to mailing lists maintained by the university or agency for the purpose of soliciting competition.
 - (b) Agencies and universities shall advertise their solicitations through the Division of Purchase and Contract for the following purchases:
 - (i) Agencies: For purchases involving an expenditure of public funds exceeding ten thousand dollars (\$10,000), up to the general delegation limit for an agency established by the SPO under the provisions of G.S. 143-53(a)(2);
 - (ii) Universities: For purchases involving an expenditure of public funds exceeding twenty five thousand dollars (\$25,000), up to the benchmark established for a university under the provisions of G.S. 116-31.10.

Agencies and universities may advertise solicitations on smaller dollar purchases through the Division of Purchase and Contract.

- (c) The using agency shall award contracts under the statutory limit for universities and the general delegation for all other agencies.
- (3) Competitive Bidding Procedure: Where the total requirements for commodities, services or printing jobs involve an expenditure of public funds in excess of the expenditure benchmark established under the provisions of G.S. 116-31.10 or the general delegations established by the SPO under the provisions of G.S. 143-53(a)(2), the competitive bidding procedure as defined in G.S. 143-52 shall be utilized as follows:
 - (a) Sealed offers for commodities and printing shall be solicited by the Division of Purchase and Contract via advertisement;
 - (b) For service contracts, the universities and other agencies shall solicit sealed offers for their university/agency in accordance with the rules established for Sub-items (2)(a) and (b) of this Rule. After opening and completing the evaluation of offers received, the agency shall prepare a written recommendation for award, and if over the benchmark established under G.S. 116-31.10 or the general delegations established by the SPO, shall submit a copy of all offers received and their recommendation of award or other action to the Division of Purchase and Contract for approval or other action deemed necessary by the SPO (Examples: cancellation, negotiation, etc.). Notice of the Division of Purchase and Contract's decision shall be sent to the agency. The using agency shall award contracts for services;
 - (c) Sealed offers for statewide term contracts for commodities, printing and services shall be solicited by the Division of Purchase and Contract via advertisement.
- (4) For each service contract handled by the agency, the agency shall prepare a task description of the services and desired results. Task descriptions shall contain all of the following:
 - (a) The date(s) of service (The contract shall not be for more than three years including extensions and renewals, without the prior approval of the SPO for unusual requirements);
 - (b) Detailed specifications or type and level of work required;
 - (c) What the State shall furnish;
 - (d) What the contractor shall furnish;
 - (e) The method, schedule, and procedures for billing and payments; and
 - (f) Other subject matters bearing on the conduct of the work.
- (5) Rules applying to service and printing contracts do not apply to local school administrative units or community colleges.

History Note: Authority G.S. 143-49; 143-52; 143-53; 143-53.1;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996; January 1, 1985;
Temporary Amendment Eff. February 15, 1998;
Amended Eff. April 1, 1999.

01 NCAC 05B .0302 MAILING LISTS

History Note: Authority G.S. 143-49; 143-52;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Temporary Repeal Eff. February 15, 1998;
Repealed Eff. April 1, 1999.

01 NCAC 05B .0303 TELEGRAPH, FACSIMILE, AND TELEPHONE OFFERS

Telegraph, facsimile, and telephone offers shall not be accepted in response to solicitations that are required to be sealed.

History Note: Authority G.S. 143-49; 143-52; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.

01 NCAC 05B .0304 RECALL OF OFFERS

Offers may be recalled prior to opening upon signed request from an authorized agent of the company.

History Note: Authority G.S. 143-49; 143-52;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.

01 NCAC 05B .0305 PUBLIC OPENING

(a) Advertised procurements shall be publicly opened at the time, date, and place identified in the procurement document. At the time of opening, the names of the companies, the manufacturer(s) and catalog number(s) of the item(s) they have offered and the prices, deliveries and payment terms they have submitted shall be tabulated and this tabulation shall become public record, except as provided in Paragraph (b) of this Rule.

(b) Under a two step process, the cost/price offer(s) shall not become public record until the technical offer(s) has been evaluated (first step) and then only those offerors determined by the agency which issued the solicitation document to have acceptable technical offers shall have their cost/price offers opened (second step). The cost/price offers from offerors whose technical offers were deemed unacceptable shall remain unopened. The remaining cost/price offers shall be publicly opened, and the offeror(s) with the acceptable technical offer(s) notified of the time and place for the opening. At least two agency working days notice shall be given prior to the opening. In addition, there shall be at least two agency employees present at the opening.

History Note: Authority G.S. 143-49; 143-52; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.

01 NCAC 05B .0306 LATE OFFERS, MODIFICATIONS, OR WITHDRAWALS

No late offer, late modification, or late withdrawal shall be considered unless received before contract award, and the offer, modification, or withdrawal would have been timely but for the action or inaction of agency personnel directly serving the procurement process. The offeror shall have his offer delivered on time, regardless of the mode of delivery used, including the U.S. Postal Service or any other delivery services available.

History Note: Authority G.S. 143-49; 143-52;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.

01 NCAC 05B .0307 ERROR/CLARIFICATION

When an offer appears to contain an obvious error or otherwise where an error is suspected, the circumstances may be investigated and then may be considered and acted upon. Any action taken shall not prejudice the rights of the public or other offering companies. Where offers are submitted substantially in accordance with the procurement document but are not

entirely clear as to intent or to some particular fact or where there are other ambiguities, clarification may be sought and accepted provided that, in doing so, no change is permitted in prices.

History Note: Authority G.S. 143-49; 143-52;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.

01 NCAC 05B .0308 EXTENSION OF ACCEPTANCE TIME

When in the public interest, companies may be requested to extend the time offered for the acceptance of offers.

History Note: Authority G.S. 143-49; 143-52;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.

01 NCAC 05B .0309 EVALUATION

(a) In determining the award of contracts, bona fide offers shall be considered and evaluated as provided by statute and applicable rules. The evaluation criteria to be used in determining the award of contract shall be identified in the procurement document.

(b) An unexecuted offer or an offer without a delivery time shall be rejected.

(c) During the period of evaluation and prior to award, only the information provided in the tabulation is public record. Possession of offers, including any accompanying information submitted with the offers, shall be limited to persons in the agency who are responsible for handling the offers and accompanying information, and to others determined necessary by the agency which issued the solicitation document, for the purpose of evaluation and award of contract. Offeror participation in the evaluation process shall not be permitted. Any communication with an offeror that may be necessary for purpose of clarification of its offer shall be conducted by the agency which issued the solicitation document. After award of the contract or when the need for the item or service is canceled, the complete file shall be available to any interested party with the exception of trade secrets subject to the provisions of Rules .1501 and .1518 of this Subchapter.

History Note: Authority G.S. 143-49; 143-52; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.

01 NCAC 05B .0310 NOTIFICATION OF AWARD

If a solicitation is required to be advertised through the Division of Purchase and Contract, then notice of the resulting contract award shall be posted via the Division of Purchase and Contract's home page by the agency issuing the solicitation document in accordance with Rule .0316 of this Section. In addition, after contracts are awarded, successful companies shall be notified in writing or electronically by the agency issuing the solicitation document.

History Note: Authority G.S. 143-49; 143-52; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996; May 1, 1988; July 1, 1987;
Temporary Amendment Eff. February 15, 1998;
Amended Eff. April 1, 1999.

01 NCAC 05B .0311 GOODS REQUIRING IMMEDIATE ACCEPTANCE

History Note: *Authority G.S. 143-49; 143-52;*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. July 1, 1987;
 Repealed Eff. February 1, 1996.

01 NCAC 05B .0312 LACK OF COMPETITION

The purpose of soliciting offers is both to seek and to obtain competition; the responsibility is dual. Where only a single offer or a single acceptable offer is received or, otherwise, where reasonable and available competition is not obtained, the reason shall be ascertained and made a matter of record.

History Note: *Authority G.S. 143-49; 143-52;*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. February 1, 1996.

01 NCAC 05B .0313 TABULATIONS AND ABSTRACTS

Telephone, electronic, and written requests for detailed or written tabulations and abstracts of offers shall not be honored.

History Note: *Authority G.S. 143-49; 143-52; 143-53;*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. February 1, 1996.

01 NCAC 05B .0314 SOLICITATION DOCUMENTS

(a) An alternate procurement method to the Invitation for Bids (IFB) is a Request for Proposals (RFP). When using a RFP, the rules of Subchapters 5A and 5B of this Chapter shall also apply. A RFP may also be handled as a two step process in accordance with Rule .0305 of this Section.

(b) For the purpose of Subchapters 5A and 5B of this Chapter, a solicitation document is defined as a written Request for Quotes (RFQ), RFP or an IFB.

(c) All agencies shall use the IFB or RFP document, whichever is applicable, when soliciting competition on contracts valued over twenty five thousand dollars (\$25,000). The IFB and RFP solicitation documents used by agencies shall require bidders or offerors to certify that each bid or offer is submitted competitively and without collusion.

History Note: *Authority G.S. 143-49; 143-52; 143-53; 143-54;*
 Eff. February 1, 1996;
 Amended Eff. April 1, 1999.

01 NCAC 05B .0315 DIVISION OF REQUIREMENTS

An agency shall not divide requirements in order to keep the expenditure under its benchmark or delegation and thereby avoid following the appropriate contracting requirement. In the case of similar and related items and groups of items, the dollar limits apply to the total cost rather than the cost of any single item.

History Note: *Authority G.S. 143-52; 143-53;*

Eff. April 1, 1999.

01 NCAC 05B .0316 ADVERTISEMENT REQUIREMENTS

(a) Unless already required by statute, all advertisements required by rule shall be through the Division of Purchase and Contract via the Division's home page on the internet. If advertisement is required by rule, the solicitation shall be advertised at least once and at least 10 days prior to the date designated for opening. This Rule does not prevent solicitation of offers by additional direct mailings or additional advertisement by an agency.

(b) Agencies required by rule to advertise their solicitations shall electronically transmit the required data directly to the Division's home page. The required data shall include the complete solicitation document (specifications, requirements, terms and conditions, etc.), with agency name, buyer name, phone number and address for accessing hard copies of the solicitation, solicitation identification number, title (a short description of the commodity, service or printing requirement), and the opening date, time and place. If the solicitation requires potential offerors to attend a mandatory conference or mandatory site visit, this information shall also be furnished with the advertisement, to include date, time, location, contact person and the contact person's phone number.

(c) Within three agency working days from the award of a contract that has been advertised through the Division, agencies shall electronically transmit an award notice directly to the Division's home page on the internet. The award notice shall be posted for at least 30 consecutive calendar days. This award notice shall identify the contract and award information.

(d) Exceptions to this Rule are as follows:

- (1) When it is deemed by the agency's executive officer or the officer's designee that there is a valid reason for the agency not to transmit the advertisement or award notice electronically, that agency may submit the data to the Division, so the Division may transmit it electronically, or the agency may place the advertisement (excluding the complete solicitation document) via newspaper. If advertised via newspaper, the agency which issued the solicitation document shall be responsible for the advertisement and the award notice shall not be required. Some valid reasons include computer equipment failure, networking difficulties, or insufficient copies of samples for a printing job.
- (2) If there is an attachment to a solicitation that the agency determines will not be electronically transmitted, then the solicitation document, when it is electronically transmitted, shall include instructions to contact the agency which issued the solicitation to obtain the attachment.
- (3) If an agency determines that it is not feasible to electronically transmit a particular solicitation document through the Division's home page, then the agency shall electronically transmit a summary notice in the same way as if it had electronically transmitted the solicitation document. The summary notice will instruct anyone inquiring about the solicitation on the Division's home page to contact the agency for a hard copy.

*History Note: Authority G.S. 143-52; 143-53;
Temporary Adoption Eff. February 15, 1998;
Eff. April 1, 1999.*

01 NCAC 05B .0317 MANDATORY CONFERENCES/SITE VISITS

(a) It is recommended, except in unusual cases, for agencies only to urge and caution potential offerors to attend scheduled conferences or site visits.

(b) When a solicitation requires potential offerors to attend a mandatory conference or mandatory site visit, the date, time, location, and other pertinent details of the conference or site visit shall be given in the solicitation document, and in the advertisement (if required by rule).

(c) If only one potential offeror attends the mandatory conference or mandatory site visit, the conference or site visit may continue to be conducted, but the solicitation shall be canceled immediately following the conference or site visit. If this occurs, the agency shall investigate why only one potential offeror was in attendance and ascertain if there is any competition available. If it is determined that competition is available, the agency shall again attempt to obtain competition by following the rules of this Subchapter, unless otherwise permitted by rule. If it is determined that there is no competition available, then the procurement may be handled as a waiver as permitted by rule.

(d) Any and all questions by a potential offeror regarding a solicitation document shall be addressed to the purchaser named on the document. Any and all revisions to the solicitation document shall be made only by written addendum from the purchaser. Verbal communications from whatever source are of no effect.

History Note: Authority G.S. 143-52; 143-53;
Eff. April 1, 1999.

SECTION .0400 - INFORMAL PROPOSALS (QUOTATION) PROCEDURE

01 NCAC 05B .0401 GENERAL DELEGATION
01 NCAC 05B .0402 REVIEW BY BOARD OF AWARD AND SECRETARY OF ADMINISTRATION
01 NCAC 05B .0403 DIVISION OF REQUIREMENTS

History Note: Authority G.S. 143-52; 143-53; 143-53.1;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996; January 1, 1985;
Temporary Repeal Eff. February 15, 1998 (1 NCAC 5B .0401);
Repealed Eff. April 1, 1999.

01 NCAC 05B .0404 DELEGATIONS

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987; January 1, 1985;
Repealed Eff. February 1, 1996.

SECTION .0500 - REJECTION OF OFFERS

01 NCAC 05B .0501 BASIS FOR REJECTION

In soliciting offers, any and all offers received may be rejected in whole or in part. Basis for rejection shall include, but not be limited to, the offer being deemed unsatisfactory as to quantity, quality, delivery, price or service offered; the offer not complying with conditions of the procurement document or with the intent of the proposed contract; lack of competitiveness by reason of collusion or otherwise or knowledge that reasonably available competition was not received; error(s) in specifications or indication that revision(s) would be to the state's advantage; cancellation of or changes in the intended project or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances which prevent determination of the lowest responsible or most advantageous offer; any determination that rejection would be to the best interest of the state.

History Note: Authority G.S. 143-52; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.

01 NCAC 05B .0502 PUBLIC RECORD

Action in rejecting offers in whole or in part shall be made a matter of record.

*History Note: Authority G.S. 143-52; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.*

01 NCAC 05B .0503 NEGOTIATION

If an agency does not receive a satisfactory offer in response to a solicitation and all offers are rejected, negotiations may be conducted with all known sources of supply that may be capable of satisfying the requirement, if it is determined by the agency that issued the solicitation document that soliciting offers again would serve no purpose. The negotiations shall be conducted by that agency if under their benchmark or delegation. Negotiations shall be conducted in writing and shall include standard language and terms and conditions issued by the Division of Purchase and Contract, unless otherwise provided by rule. If the negotiations are conducted with only one source or if only one source responds to the negotiations, the reason for lack of competition shall be documented in writing for public record. Negotiations may also be conducted under conditions that merit a waiver of competition, or in other situations that are advantageous as determined by the SPO.

*History Note: Authority G.S. 143-52; 143-53; 143-60;
Eff. February 1, 1996;
Amended Eff. April 1, 1999.*

SECTION .0600 - PURCHASE OF USED ITEMS

01 NCAC 05B .0601 GENERAL PROCEDURES

Rules of this Subchapter regarding seeking competition shall be followed wherever feasible, when it appears that the acquisition of used commodities is in the public interest.

*History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.*

01 NCAC 05B .0602 ACQUISITION IN BEST INTEREST OF STATE

Solicitation documents on used items may or may not include a request for prices on like new products, but in either case acquisition may be made on the basis of that which is considered most advantageous for the intended purpose.

*History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.*

SECTION .0700 - REMOVAL OF CERTAIN ITEMS FROM GENERAL CONSTRUCTION

01 NCAC 05B .0701 POLICY

Every agency shall review the items being included in a construction/renovation project and remove any items that it considers are non-related to the actual construction/renovation of the building. Items that are considered commodities or just furnishings, and that would complete the project for use by the agency, shall be handled in accordance with the rules of this Chapter. Items that are usually removed for construction/renovation projects include carpet, office panel systems, food service equipment, and furniture. If an agency determines that one of these items, or any item that is normally handled as a commodity purchase, is best suited for inclusion in the construction/renovation project, the agency's justification shall be documented in writing for public record.

*History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.*

01 NCAC 05B .0702 TURN KEY PROJECTS

*History Note: Authority G.S. 143-341(3);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.*

SECTION .0800 - PRINTING**01 NCAC 05B .0801 GENERAL POLICY****01 NCAC 05B .0802 PROCEDURE**

*History Note: Authority G.S. 143-49; 143-53;
Eff. February 1, 1976;
Readopted February 27, 1979;
Amended Eff. February 1, 1996; January 1, 1985;
Temporary Repeal Eff. February 15, 1998;
Repealed Eff. April 1, 1999.*

- 01 NCAC 05B .0803 LEAD TIME**
- 01 NCAC 05B .0804 SUBMISSION OF MATERIAL AFTER PROMISED DATE**
- 01 NCAC 05B .0805 SUBMISSION OF MANUSCRIPTS**
- 01 NCAC 05B .0806 PRINTING SAMPLES**
- 01 NCAC 05B .0807 AUTHOR'S ALTERATIONS**
- 01 NCAC 05B .0808 APPROVAL SIGNATURE**

*History Note: Authority G.S. 143-49;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.*

01 NCAC 05B .0809 MULTI-COLOR PROCESS PRINTING

History Note: Authority G.S. 143-169;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1987.

01 NCAC 05B .0810 STATEMENT OF COST OF PUBLIC DOCUMENTS

History Note: Authority G.S. 143-170.1;
Eff. July 1, 1987;
Repealed Eff. February 1, 1996.

SECTION .0900 - INSPECTION AND TESTING

01 NCAC 05B .0901 RESPONSIBILITY

In general, it is the responsibility of the receiving agency to inspect all materials, supplies, and equipment upon delivery to insure compliance with the contract requirements and specifications. However, when the contract requires an inspection by the Division of Purchase and Contract, it shall be conducted by a designee of the Division.

History Note: Authority G.S. 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.

01 NCAC 05B .0902 SELECTION

The Division may periodically inspect any items to insure that specifications are met. The agency must insure that items and services purchased comply with applicable codes, statutes, local ordinances, policies or safety requirements.

History Note: Authority G.S. 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.

01 NCAC 05B .0903 REINSPECTIONS

The Division may re-inspect any item or service performed and reverse an agency decision when justified.

History Note: Authority G.S. 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.

01 NCAC 05B .0904 SAMPLES

When samples are required in response to a solicitation document issued by the Division of Purchase and Contract, the Division shall test, or have tested, those samples. Samples shall not be sent directly to laboratories outside the Division of Purchase and Contract or agency unless it is determined by the Division that these facilities do not have the capability, time, or expertise needed.

History Note: Authority G.S. 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.

01 NCAC 05B .0905 SPECIFICATIONS

When it is determined to be advantageous, the agency which awarded the contract may authorize revisions to a contract specification, including any cost adjustment associated with any such revision, as part of contract administration. If an increase in cost results in the total contract value being more than the agency's benchmark or delegation, then prior written approval shall be obtained from the Division of Purchase and Contract, regardless of what agency initially awarded the contract.

History Note: Authority G.S. 143-53; 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.

01 NCAC 05B .0906 REPORT OF DISCREPANCY

Where commodities, services or printing delivered fail to meet the specifications or contract requirements, the discrepancy shall be resolved by the agency which issued the solicitation document.

History Note: Authority G.S. 143-53; 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.

SECTION .1000 - GUARANTEES AND WARRANTIES

01 NCAC 05B .1001 ENFORCEMENT

Using agencies shall enforce the contractual guarantee or warranty applying to the supplies, materials, and equipment purchased.

History Note: Authority G.S. 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.

01 NCAC 05B .1002 REPORT TO PURCHASING

If any agency has difficulty in obtaining satisfactory performance, including service as provided for in a guarantee or warranty, under a contract handled by the Division of Purchase and Contract, the matter shall be referred to the Division of Purchase and Contract for attention and appropriate action.

History Note: Authority G.S. 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;

Amended Eff. February 1, 1996.

01 NCAC 05B .1003 RESPONSIBILITY OF USING AGENCY

The using agency must notify the vendor promptly when latent or other defects are discovered. In the event the vendor fails to remedy the condition reported, and the contract was handled by the Division of Purchase and Contract, the matter shall be referred to the Division of Purchase and Contract.

*History Note: Authority G.S. 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.*

SECTION .1100 - TERM CONTRACTS

01 NCAC 05B .1101 USE

(a) Term contracts, known also as indefinite quantity or requirements contracts, are used generally to establish suppliers and prices of a given commodity, group of commodities, printing, or services for a period of time without guaranteed quantities being specified. Statewide term contracts consolidate normal requirements of all agencies into one agreement and shall be handled by the Division of Purchase and Contract.

(b) A term contract is a binding agreement between purchaser and seller to buy and sell certain commodities, printing, or services at certain prices and under stipulated terms and conditions. It is neither an "approved list" nor a list of approved or ceiling prices. No agency may purchase any commodities, printing, or services covered by a statewide term contract from any other sources.

(c) A term contract shall be based upon competition, where available, with the potential vendors being advised as to the agency(s)' business they are competing for and, if successful, the agency(s)' business they have earned.

(d) Agencies may handle agency specific term contracts for use by their agency if the expenditure over the term of the contract is under their benchmark or delegation, and the commodity, printing, or service is not covered by a statewide term contract.

(e) Rules applying to service and printing contracts do not apply to local school administrative units or community colleges.

*History Note: Authority G.S. 115C-522; 115D-58.5; 143-52; 143-53; 143-55;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.*

01 NCAC 05B .1102 DETERMINING FACTORS

In determining whether a product should be on a statewide term contract, the Division shall consider such factors as volume, nature of the product, repetitiveness of use, relative stability of prices, and transportation costs. In determining whether a product should be on an agency specific term contract, the agency shall consider such factors as volume, nature of the product, repetitiveness of use, relative stability of prices, and transportation costs.

*History Note: Authority G.S. 143-52; 143-53; 143-55;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999.*

01 NCAC 05B .1103 COPIES OF TERM CONTRACTS

01 NCAC 05B .1104 AMENDMENTS TO CONTRACTS

History Note: *Authority G.S. 143-52; 143-55;*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Repealed Eff. February 1, 1996.

01 NCAC 05B .1105 SPECIAL ITEMS

In situations where a general type of item is covered by a term contract but a special type item is needed for a particular application, the agency may proceed with the purchase of the special type item under the rules of this Chapter. The need for the special type item in lieu of the general type item shall be justified by the agency/user in writing and the agency file documented for public record.

History Note: *Authority G.S. 143-52; 143-53; 143-55;*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. April 1, 1999.

01 NCAC 05B .1106 DISCOUNT SCHEDULES

History Note: *Authority G.S. 143-52; 143-55; 143-58; 143-49;*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Repealed Eff. February 1, 1996.

01 NCAC 05B .1107 ANTI-INFLATION COMPLIANCE: TERM CONTRACT PRICE INCREASES

History Note: *Authority G.S. 143-52; 143-53; 143-55;*
 Eff. February 27, 1979;
 Repealed Eff. June 1, 1986.

01 NCAC 05B .1108 EXTENSION OF CONTRACT TERMINATION DATES

When in the public interest, contractors may be requested to extend the scheduled termination dates of contracts.

History Note: *Authority G.S. 143-52; 143-49;*
 Eff. February 1, 1996.

SECTION .1200 - PARTIAL AND MULTIPLE AWARDS

01 NCAC 05B .1201 USE

(a) Partial, progressive or multiple awards may be made by reason of insufficient funds, legislative mandates, where it is advantageous to award separately by items or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service(s) or geographical areas.

(b) Notwithstanding the necessity for awards to more than one supplier in the case of some indefinite quantity contracts, such awards shall be limited to the number of suppliers deemed necessary to reasonably satisfy the intended requirements. Extreme care shall be exercised to protect the character and principles of competition. Quantities shall not be divided among companies on definite quantity requirements unless and except as provided in the procurement document.

History Note: Authority G.S. 143-53(6);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.

01 NCAC 05B .1202 SELECTION FROM LISTS OF SUPPLIERS

History Note: Authority G.S. 143-53(6);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

SECTION .1300 - SMALL PURCHASES

01 NCAC 05B .1301 PROCEDURES

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Temporary Repeal Eff. February 15, 1998;
Repealed Eff. April 1, 1999.

01 NCAC 05B .1302 DOLLAR LIMITATIONS

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

01 NCAC 05B .1303 DESIGNATION OF AUTHORIZED PERSONS

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. April 1, 1999.

SECTION .1400 - WAIVER OF COMPETITION

01 NCAC 05B .1401 POLICY

Under conditions listed in this Rule, and otherwise if deemed to be in the public interest by the SPO or the agency, if under its delegation or benchmark, competition may be waived. Conditions permitting waiver include cases where performance or price competition is not available; where a needed product or service is available from only one source of supply; where emergency action is indicated; where competition has been solicited but no satisfactory offers received; where standardization or compatibility is the overriding consideration; where a donation predicates the source of supply; where personal or particular professional services are required; where a particular medical product or service, or prosthetic appliance is needed; where a product or service is needed for the blind or severely disabled and there are overriding considerations for its use; where additional products or services are needed to complete an ongoing job or task; where products are bought for "over the counter" resale; where a particular product or service is desired for educational, training, experimental, developmental or research work; where equipment is already installed, connected and in service, and it is determined advantageous to purchase it; where items are subject to rapid price fluctuation or immediate acceptance; where there is evidence of resale price maintenance or other control of prices, lawful or unlawful, or collusion on the part of companies which thwarts normal competitive procedures; where the amount of the purchase is too small to justify soliciting competition or where a purchase is being made and a satisfactory price is available from a previous contract; where the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s); and where a used item(s) is available on short notice and subject to prior sale.

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.

01 NCAC 05B .1402 APPROVAL AND DOCUMENTATION

Although competition may be waived pursuant to Rule .1401 of this Section, its use is required wherever practicable. Where waiver is contemplated, agencies may negotiate with a potential vendor(s) in an effort to acquire the quality of commodity, service or printing needed at the best possible price, delivery, terms and conditions, when the expenditure is less than their respective benchmark or delegation. A solicitation document requesting or inviting an offer(s) shall be issued by the agency, including standard language, terms and conditions issued by the Division of Purchase and Contract. Under an emergency or pressing need situation, a solicitation document requesting or inviting an offer(s) shall be issued by the agency, including standard language, terms and conditions issued by the Division, unless circumstances prohibit their use. Negotiations may also be conducted with a potential vendor(s) for contracts exceeding an agency's benchmark or delegation, but are subject to the conditions of Rule .1518 of this Subchapter, except where otherwise permitted by rule.

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987.

01 NCAC 05B .1403 DATA PROCESSING HARDWARE AND SOFTWARE

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987;
Repealed Eff. February 1, 1996.

SECTION .1500 - MISCELLANEOUS PROVISIONS

01 NCAC 05B .1501 CONFIDENTIALITY

(a) Trade secrets which the offeror does not wish disclosed shall be identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Cost information shall not be deemed confidential.

(b) To promote maximum competition and to protect the public competitive procedure from being used to obtain information which would normally not be available otherwise, the agency which issued the solicitation document may maintain the confidentiality of certain types of information. Such information includes trade secrets, as determined by North Carolina law, and like information as the SPO or the agency's executive officer or the officer's designee may determine to insure the integrity of the public purchasing process.

History Note: *Authority G.S. 143-52; 143-53;*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. April 1, 1999; February 1, 1996.

01 NCAC 05B .1502 BONDS

01 NCAC 05B .1503 REMEDIES

History Note: *Authority G.S. 143-52; 143-60;*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Repealed Eff. February 1, 1996.

01 NCAC 05B .1504 PAYMENT PLANS

Purchase contracts may provide for payment over a period of time. Such instances, however, shall be fully justified, kept to a minimum and carry written prior approval of the administrative head of the agency. Administrative heads and governing board of agencies shall see that statutory or other prohibitions are not violated. The intended plan of payment shall be included in the procurement document.

History Note: *Authority G.S. 143-53;*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. February 1, 1996.

01 NCAC 05B .1505 FUNDS FROM DIFFERENT SOURCES

(a) All public funds irrespective of source, whether special, federal, local, gifts, bequests, receipts, fees, or State appropriated, used for the purchase, rental, lease, installment purchase and lease/purchase of commodities, printing and services shall be handled under the provisions of Article 3 of G.S. 143 and in accordance with rules adopted pursuant thereto by the Division of Purchase and Contract.

(b) Rules applying to service, rental, lease, and printing contracts do not apply to local school administrative units or community colleges.

History Note: *Authority G.S. 143-53; 143-60(5);*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. April 1, 1999; February 1, 1996.

01 NCAC 05B .1506 CONDITIONAL GRANTS ETC IN PUBLIC PURCHASING

Where a grant, donation or special discount is predicated upon making a purchase from the grantor, the proposed transaction shall be explained in writing and shall have prior approval of the SPO. Prior to approval, the SPO shall consider the conditions placed on the grant, donation, or special discount, and how they will affect the agency and the State, the cost of agreeing to such conditions, and the market place conditions. When a donation from private sources is predicated upon making the purchase or lease from a specific source, the purchase or lease may be made without prior approval of the SPO or Secretary.

History Note: *Authority G.S. 143-53;*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. February 1, 1996; July 1, 1987.

01 NCAC 05B .1507 CHANGE IN CORPORATE STRUCTURE

In cases where contractors are involved in corporate consolidations, acquisitions or mergers, the agency which issued the solicitation document resulting in the contract may negotiate agreements for the transfer of contractual obligations and the continuance of contracts within the framework of the new corporate structures but with the understanding that the state=s contracts are not instruments for sale and shall not be assigned.

History Note: *Authority G.S. 143-53;*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. April 1, 1999; February 1, 1996.

01 NCAC 05B .1508 PURCHASES FOR ACROSS THE COUNTER RESALE

Purchases of items for "across the counter" resale are not handled through the Division of Purchase and Contract. However, all purchases of items for use by agencies, even if channeled through bookstores or other internal supply sources, including stockrooms and warehouses, are to be in accordance with rules adopted by the Secretary.

History Note: *Authority G.S. 143-53; 143-60(5);*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. February 1, 1996.

01 NCAC 05B .1509 PURCHASING FROM OR THROUGH AGENCY EMPLOYEES

Every reasonable effort shall be made to avoid making purchases from or through employees of any agency. Prior written approval from the SPO is required in any instance which may develop of doing business with such personnel. In deciding whether to grant approval, the SPO shall consider the type item or service needed, the prevailing market conditions, whether competition is available, the cost involved, and the effects of doing business with the employee.

History Note: *Authority G.S. 143-53; 143-60(5);*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987.

01 NCAC 05B .1510 USE OF PURCHASING POWER FOR PRIVATE GAIN

The purchasing power of the state or the agency shall not be used for private advantage or gain. Purchases under contracts made by the state or the agency, except those in accordance with G.S. 143-58.1 shall not be allowed for personal use out of private funds nor shall agencies place orders for articles for ownership by employees or other individuals.

*History Note: Authority G.S. 143-53; 143-58.1;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987.*

01 NCAC 05B .1511 ANTITRUST VIOLATIONS

In instances of identical offers or where there are otherwise indications of collusion, awards may be made in a manner intended to discourage or prevent its continuance as deemed to represent the state=s best interest. Instances of suspected antitrust violation shall be reported to appropriate law enforcement authorities by the agency which issued the solicitation document.

*History Note: Authority G.S. 143-53; 143-54;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.*

01 NCAC 05B .1512 AVAILABILITY OF SERVICES TO CERTAIN NON-STATE AGENCIES

- (a) The Division of Purchase and Contract shall make purchasing services available to certain non-State agencies as defined by G.S. 143-49 and 143-49.1. This may be affected by budgetary allowances for personnel, time and related costs.
- (b) Where a non-State agency covered by this provision elects to participate in a contract, its resulting contractual duties, obligations and responsibilities shall be the same as those required for agencies. Non-State agencies covered by this provision shall make payments to suppliers in a timely manner and in accordance with the terms of the contracts.
- (c) As may be practicable in terms of personnel, time and costs, the Division may offer its services, in addition to purchasing and contracting, to non-State agencies with respect to preparing specifications and contracts for services, inspecting and testing of products, expediting deliveries and advising as to market conditions.

*History Note: Authority G.S. 143-49(6); 143-49.1; 143-52;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987.*

01 NCAC 05B .1513 COOPERATIVE PURCHASING

Where an agency is a participant in an authorized cooperative project with another governmental activity or with a charitable non-profit organization, goods and services necessary to the project shall be acquired according to the rules of this Chapter; provided, however, that if the interest of the State would be better served by one of the following acquisition methods, the SPO may authorize that acquisition method to be used:

- (1) by making acquisition on behalf of such governmental activity or charitable non-profit organization; or
- (2) by authorizing acquisition on the State's behalf under the provisions of G.S. 143, Article 8; or
- (3) by authorizing acquisition on the State's behalf under the provisions of another State or another governmental entity, provided due consideration is given by the SPO to the differences in purchasing rules, regulations and procedures of the contracting entity.

History Note: Authority G.S. 143-49; 143-53; 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987.

01 NCAC 05B .1514 ANTI-INFLATION COMPLIANCE CERTIFICATION
01 NCAC 05B .1515 ANTI-INFLATION COMPLIANCE: TIE BIDS

History Note: Authority G.S. 143-49; 143-52; 143-53;
Eff. February 27, 1979;
Repealed Eff. June 1, 1986.

01 NCAC 05B .1516 ADVERTISING

No contract shall be used for any advertising by the contractor.

History Note: Authority G.S. 143-53; 143-60;
Eff. February 1, 1996.

01 NCAC 05B .1517 GOODS REQUIRING IMMEDIATE ACCEPTANCE

History Note: Authority G.S. 143-49; 143-52;
Eff. February 1, 1996;
Repealed Eff. April 1, 1999.

01 NCAC 05B .1518 BOARD OF AWARD

(a) When the dollar value of a contract for the purchase, lease, or lease/purchase of commodities or printing exceeds the agency's benchmark or delegation, the Board of Award (Board) shall canvass the Division's recommended action. This also includes reporting of emergency and pressing need purchases over the agency's benchmark or delegation. The Division shall submit the Board's recommendation (award, cancellation, approval, negotiation, etc.) to the Secretary. The Secretary may either concur with the recommendation of the Board by awarding contracts or approving other recommended action, or take other action as deemed necessary. A Board of Award meeting shall be comprised of at least two voting members. The SPO or designee shall conduct the meeting and one Division employee shall take the minutes of the meeting. The Advisory Budget Commission may designate two or more voting members to serve as members of the Board. The SPO may further designate the following persons who may serve in this capacity in the absence of member(s) of the Commission:

- (1) Assistant Superintendent for Financial Services, Department of Public Instruction;
- (2) Representative from Attorney General's Office;
- (3) All Council of State members with the exception of the Governor.

These alternate members shall not further delegate this responsibility.

(b) Records shall be kept of each meeting and made public by the SPO unless there is statutory authority for keeping the record for a specific purchase confidential, and if so, that record shall be kept confidential. The Secretary may elect to proceed with the award of contracts without the recommendation of the Board in cases of emergencies or in the event that a Board is not available. In such cases, contracts awarded without Board review shall be reported to a subsequent Board as a matter of record.

(c) Exemptions: Approval by the Secretary is not required for the following purchase actions: exemption by statute, by rule, by special delegation, or where one agency is buying from another agency or through the State Surplus Property Agency or the State Agency for Federal Surplus Property.

*History Note: Authority G.S. 143-53; 143-318.18(10);
Eff. February 1, 1996;
Amended Eff. April 1, 1999.*

01 NCAC 05B .1519 PROTEST PROCEDURES

(a) To insure fairness to all offerors and to promote open competition, agencies and the Division of Purchase and Contract shall actively follow-up and be consistent in responding to an offeror's protest over contract awards.

(b) This Rule applies only to contracts with an actual or estimated dollar value over ten thousand dollars (\$10,000). Agencies may establish procedures to handle an offeror's concerns for contracts with less dollar value.

(c) When an offeror wants to protest a contract awarded by an agency over ten thousand dollars (\$10,000) in value, the agency and the offeror shall comply with the following:

- (1) The offeror shall submit a written request for a protest meeting to the agency's executive officer which shall be received by the agency's executive officer's office within 30 consecutive calendar days from the date of the contract award. The executive officer shall furnish a copy of this letter to the SPO within five consecutive calendar days of receipt. The offeror's letter shall contain specific reasons and any supporting documentation for why it has a concern with the award. If the letter does not contain this information, or if the executive officer determines that a meeting would serve no purpose, then the executive officer may, within 10 consecutive calendar days from the date of receipt of the letter, respond in writing to the offeror and refuse the protest meeting request. A copy of the executive officer's letter shall be forwarded to the SPO.
- (2) If the protest meeting is granted, the executive officer shall attempt to schedule the meeting within 30 consecutive calendar days after receipt of the letter, or as soon as possible thereafter. Within 10 consecutive calendar days from the date of the protest meeting, the executive officer shall respond to the offeror in writing with the executive officer's decision. A copy of the executive officer's letter shall be forwarded to the SPO.
- (3) The agency shall notify the SPO in writing of any further administrative or judicial review of the contract award.
- (4) The executive officer may appoint a designee to act on the executive officer's behalf under this Rule.

(d) When an offeror wants to protest a contract awarded by the Secretary over ten thousand dollars (\$10,000) in value, the SPO and the offeror shall comply with the following:

- (1) The offeror shall submit a written request for a protest meeting to the SPO which shall be received by the Division within 30 consecutive calendar days from the date of the contract award. The offeror's letter shall contain specific reasons and any supporting documentation for why it has a concern with the award. If the letter does not contain this information, or if the SPO determines that a meeting would serve no purpose, then the SPO may, within 10 consecutive calendar days from the date of receipt of the letter, respond in writing to the offeror and refuse the protest meeting request.
- (2) If the protest meeting is granted, the SPO shall attempt to schedule the meeting within 30 consecutive calendar days after receipt of the letter, or as soon as possible thereafter. Within 10 consecutive calendar days from the date of the protest meeting, the SPO shall respond to the offeror in writing with the SPO's decision.

*History Note: Authority G.S. 150B-2; 150B-22; 150B-23; 143-53;
Eff. February 1, 1996;
Temporary Amendment Eff. February 15, 1998;
Amended Eff. April 1, 1999.*

01 NCAC 05B .1520 DEFAULT PROCEEDINGS; DEBARMENT

(a) The agency which issued the solicitation document resulting in the contract may find a contractor in default of contract for failing to perform in accordance with the contract requirements, terms and conditions. If a contractor is found in default of contract, the agency which issued the solicitation document resulting in the contract may take action, immediate if necessary, to purchase the needed commodities, printing or services on the open market and charge any additional cost for the

commodities, printing or services and expense for doing so to the defaulting contractor. If an agency finds a contractor in default, such action and the circumstances shall be reported by the agency to the Division of Purchase and Contract in writing. This does not limit any other remedies that may be available to the State or agency.

(b) The Division may remove the contractor from any mailing lists which may be utilized and debar the contractor from doing business with the agency, or any agency, for a period of time at the discretion of the Division.

*History Note: Authority G.S. 143-49; 143-52; 143-53; 143-60;
Eff. February 1, 1996;
Amended Eff. April 1, 1999.*

01 NCAC 05B .1521 FAITHFUL PERFORMANCE

(a) A bond, or other suitable means of insuring faithful performance, may be required of the contractor at the contractor's expense.

(b) Liquidated damages, in the form of a monetary penalty for late delivery, may be provided for in the contract, as a means of ensuring faithful performance from the contractor.

*History Note: Authority G.S. 143-52; 143-53;
Eff. February 1, 1996;
Amended Eff. April 1, 1999.*

01 NCAC 05B .1522 RECIPROCAL PREFERENCE

(a) Each solicitation document used to obtain contracts for equipment, materials, supplies, and services that exceed twenty-five thousand dollars (\$25,000) in value shall include space for a bidder to give their principal place of business address if it is different than the address given in the execution section of the solicitation document. This shall not prevent the agency that issued the solicitation document from investigating this information and concluding that the principal place of business is different, according to their interpretation of G.S. 143-59(c).

(b) A reciprocal preference shall not be used when procurements are being made under G.S. 143-53(a)(5) and G.S. 143-57.

(c) For the purpose of this Section, a bidder and offeror, as well as bid and proposal, are interchangeable.

*History Note: Authority G.S. 143-59;
Temporary Adoption Eff. January 14, 2002;
Eff. April 1, 2003.*

01 NCAC 05B .1523 PROCUREMENT CARDS

(a) Procurement cards (organizational charge cards) are for official use only and shall be used in accordance with this Section and with the statewide contract established and maintained by the Division of Purchase and Contract. Use of procurement cards by any agency is contingent on satisfactory compliance review, as determined by the Division of Purchase and Contract.

As the State's electronic procurement system is implemented, it shall be used to the fullest extent possible, including issuance of purchase orders. Procurement cards may be used as a payment mechanism within e-procurement if permitted by fiscal policies of the agency.

(b) Procurement card transactions processed through the State's electronic procurement system, utilizing the card as a payment mechanism within electronic workflow and approval processes, may be in any amount consistent with agency fiscal policies.

(c) For procurement card transactions processed outside the State's electronic procurement system, the per-transaction limit shall be two thousand five hundred dollars (\$2,500.00). This limit may be changed only under the following circumstances:

- (1) In an emergency (as defined by 01 NCAC 05B .1602 or Governor's declaration), the agency card program administrator may request higher limits on cards in critical areas. Such increases shall be in effect no longer than the duration of the emergency. Requests for increased limits are to be made through the

Division of Purchase and Contract if time permits and must be reported to Purchase and Contract in any case.

- (2) Agencies may apply to the SPO for higher limits on specific types of transactions, with justification required.
- (3) The SPO may adjust limits based on analysis of the procurement card program's results, on a statewide or agency basis, after taking into consideration current market trends, the economy, and recommendations received from the State Controller and the State Auditor.

(d) Each participating agency shall designate a procurement card program administrator, who shall be the chief purchasing officer or chief fiscal officer (or person specifically designated by either of these).

- (1) All cards requested on behalf of the agency shall be sent to the program administrator (not to individual cardholders) by a traceable delivery method.
- (2) Cards shall show the agency name, cardholder, the state seal or agency logo, and indicate they are for official use only.

(e) The card program administrator, in consultation with the agency's chief executive or fiscal officer, shall determine appropriate limits by per-transaction amount (not to exceed the statewide per-transaction limits set in Paragraphs (b) or (c) of this Rule) total per billing cycle, merchant categories, and similar factors. Agencies shall submit a copy of their procurement card policies and procedures to the Division of Purchase and Contract within 90 days after program implementation and thereafter whenever such policies or procedures are updated.

(f) The card program administrator shall determine compliance with agency policy and procedures, including cardholders' acknowledgement prior to issuance of cards, account reconciliation, and security.

(g) Agencies shall comply with procurement card policies prepared and disseminated by oversight fiscal offices (e.g., Office of the State Controller for state departments) governing those agencies under their responsibility.

(h) No other charge cards that obligate payment by the agency or the State shall be used unless an existing contract obligation requires its use, but that obligation shall be discontinued no later than June 30, 2003. Requests for exceptions to this rule shall be submitted in writing to the State Purchasing Officer. Consideration of requests will be based on need, compliance reviews and contract obligations.

*History Note: Authority G.S. 143-49(8);
Temporary Adoption Eff. July 1, 2002;
Eff. April 1, 2003.*

SECTION .1600 - EXEMPTIONS, EMERGENCIES AND SPECIAL DELEGATIONS

01 NCAC 05B .1601 EXEMPTIONS

(a) Except as provided in Paragraph (c) of this Rule, it is not mandatory for the items and services listed in this Rule to be purchased through the Division of Purchase and Contract.

- (1) purchase of liquor;
- (2) perishable articles such as fresh meats;
- (3) published books, manuscripts, subscriptions to printed material, packaged copyrighted software products, and like material;
- (4) services provided by individuals by direct employment contracts with the State;
- (5) public utility services (gas, water and electricity);
- (6) telephone, telegraph and cable services furnished by those companies;
- (7) services provided which are subject to published tariff rates as established by the North Carolina Utilities Commission;
- (8) services which are merely incidental to the purchase of supplies, materials or equipment such as installation services;
- (9) contracts for construction of and structural changes to public buildings;
- (10) personal services provided by a professional individual (person) on a temporary or occasional basis, including (by way of illustration, not limitation) those provided by a doctor, dentist, attorney, architect, professional engineer, scientist or performer of the fine arts and similar professions; the exemption applies only if the individual is using his/her professional skills to perform a professional task; a personal service may also be a consulting service;
- (11) services provided directly by an agency of the State, federal or local government, or their employees when performing the service as a part of their normal governmental function.

(b) In addition to products and services exempted by statute, the SPO may exempt other products and services from purchase through the Division provided that the SPO makes findings:

- (1) that competition will not enhance the price that the State would receive for the product or service; and
- (2) that competition will not enhance the quality of the product or service that the State would receive.

(c) Contracts for bakery products and dairy products shall be awarded through the Division of Purchase and Contract, if over the agency's expenditure benchmark.

History Note: Authority G.S. 7A-6(B); 143-53; 143-56; 143-62;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; May 1, 1988; July 1, 1987.

01 NCAC 05B .1602 EMERGENCIES

(a) An agency may make purchases of commodities, printing or services in the open market in cases of emergency or pressing need. For this purpose, a pressing need is one arising from unforeseen causes including, but not limited to, delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work while emergencies are defined as situations which endanger lives, property or the continuation of a vital program and which can be rectified only by immediate, on-the-spot purchases or rental of commodities, printing or services.

(b) Agencies may negotiate with a potential vendor(s) in an effort to acquire the quality of commodity, service or printing needed at the best possible price, delivery, terms and conditions. A solicitation document requesting or inviting an offer(s) shall be issued, including standard language, terms and conditions issued by the Division of Purchase and Contract, unless circumstances prohibit their use.

(c) When emergency or pressing need action is necessary, and the expenditure is over the agency's benchmark or delegation, prior verbal approval shall be obtained from the Division if time permits. Subsequently, whether or not such prior approval was possible, if the expenditure is over the agency's benchmark or delegation, an explanation of the emergency or pressing need purchase shall be reported in writing to the Division. The Division shall report such purchases of commodities and printing to the Board as a matter of record.

History Note: Authority G.S. 143-53; 143-57; 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.

01 NCAC 05B .1603 SPECIAL DELEGATIONS

(a) The SPO may authorize, by special delegation, any agency to purchase specific commodities, printing or services without limitation as to expenditure. Such delegation is normally confined, but not limited to, commodities, printing or services which by their nature or circumstance, such as perishableness, transportation costs, local conditions or local availability, would result in handling by the Division of Purchase and Contract serving no practical purpose. Every such delegation shall be in writing and made a matter of record.

(b) The SPO may require that offers received under such delegations be sent to the Division for determination of the successful vendor.

(c) The Division shall periodically review its special delegations of purchase to ascertain the availability of these commodities, printing or services and their continued suitability for delegation.

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987.

01 NCAC 05B .1604 GENERAL DELEGATIONS

The general purchasing delegation for agencies (except for the universities) shall be not more than ten thousand dollars (\$10,000). The SPO may lower or raise this general delegation for a specific agency, up to the amount established by G.S. 143-53.1, after consultation with the State Budget Officer and the State Auditor for State agencies, and upon consideration of the agency's (except for the universities) overall capabilities, including staff resources, organizational structure, training, purchasing compliance reviews, electronic communication capabilities, and audit reports. If an agency wishes to obtain an increase in its general delegation, it shall submit a request in writing, outlining its overall capabilities, to the SPO for the SPO's consideration.

*History Note: Authority G.S. 143-53;
Temporary Adoption Eff. February 15, 1998;
Eff. April 1, 1999.*

01 NCAC 05B .1605 COMPLIANCE REVIEWS

- (a) The Division of Purchase and Contract shall conduct compliance reviews on purchasing practices at all agencies. The purpose of the compliance review shall be for determining if an agency is complying with North Carolina's purchasing statutes and rules adopted thereunder, and whether it should continue having the same level of delegation, have it reduced, or if it qualifies for an increase. A copy of the compliance report shall be provided to the agency's executive officer, the State Auditor, the State Budget Officer, the local school administrative unit's Board, any of which are applicable.
- (b) The Division's staff may enter the premises and obtain an agency's purchasing records for the purpose of the compliance review. The agency shall cooperate with the Division's staff, providing them with requested records, adequate office space for conducting the review, and agency purchasing staff for discussion of purchase transactions. The Division shall not unnecessarily require of the agency any more than is needed to complete the review.
- (c) The SPO may lower, or raise if requested, an agency's (excluding the universities) general delegation, if the results of a compliance review by the compliance staff of the Division merit such action as determined by the SPO. The SPO may lower the delegation to any level, including the complete removal of the delegation, depending on the nature of any violations found. The SPO shall report to the University's Board of Governors the results of any compliance review conducted at any of the universities, and shall provide to them the SPO's recommendation, based on those results, on what that university's benchmark should be.
- (d) The SPO shall provide to each agency, upon request, the Division's assistance in educational training for the agency's staff, to better acquaint them with the purchasing statutes and rules.

*History Note: Authority G.S. 143-53;
Eff. April 1, 1999.*

SECTION .1700 - PURCHASES FROM NORTH CAROLINA DEPARTMENT OF CORRECTION

01 NCAC 05B .1701 AUTHORIZATION

01 NCAC 05B .1702 NO COMPETITIVE BIDDING

01 NCAC 05B .1703 PURCHASES IN CONFLICT WITH STATE CONTRACTS

*History Note: Authority G.S. 148-70; 143-53(11);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.*

SECTION .1800 - INVENTORIES AND STORES

01 NCAC 05B .1801 SUPERVISION

History Note: *Authority G.S. 143-49(4); 143-60;*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Repealed Eff. June 1, 1987.

01 NCAC 05B .1802 PERSONAL PROPERTY INVENTORY PLAN

History Note: *Authority G.S. 143-49(4); 143-60;*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Repealed Eff. June 1, 1987.

01 NCAC 05B .1803 SUPERVISION

The Division of Purchase and Contract has responsibility for general supervision of storerooms and stores operated by state government, for supervision of inventories of tangible personal property belonging to state government and for reports by them of stocks on hand.

History Note: *Authority G.S. 143-49(4); 143-60;*
 Eff. February 1, 1996.

01 NCAC 05B .1804 PERSONAL PROPERTY INVENTORY PLAN

State agencies with centralized warehouse facilities, shall have inventory control procedures in place which insure at a minimum, written inventory count of contents, written records of receipts and issues, economical ordering and efficient level of inventories, safe storage of hazardous materials, and security.

History Note: *Authority G.S. 143-49(4); 143-60;*
 Eff. February 1, 1996.

SECTION .1900 - RECORDS OF THE DIVISION OF PURCHASE AND CONTRACT

01 NCAC 05B .1901 RECORD MAINTENANCE

Except where State law provides to the contrary, after the award of a contract, the purchasing records of an agency are public documents, and these documents shall be maintained for a period of five years after the expiration date of the contract.

History Note: *Authority G.S. 143-53; 143B-10(f);*
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. April 1, 1999; February 1, 1996.

01 NCAC 05B .1902 REQUISITIONS

History Note: *Authority G.S. 143B-10(f);*

Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1987.

01 NCAC 05B .1903 FILES

- (a) Each contract file shall be identified individually so it can be readily located and referenced.
- (b) All purchase transactions shall be documented. As applicable, each file shall include:
- (1) Original offers if in writing, or written documentation of verbal offers received;
 - (2) Reasons for award or cancellation;
 - (3) Worksheets/evaluations;
 - (4) Mailing list, if used;
 - (5) Written justification for waiver or emergency purchase;
 - (6) Tabulation of offers received;
 - (7) Copy of purchase order(s);
 - (8) Related correspondence;
 - (9) Reason(s) for receiving only one offer in response to a solicitation;
 - (10) Negotiated contracts; and
 - (11) Reasons for not accepting technical proposals.
- (c) After award of contract all material in the file, except confidential information, shall be open to interested persons during normal office hours, may be hand copied, or copies shall be furnished in accordance with the Public Records Act.

History Note: Authority G.S. 143-53; 143B-10(f);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987.

01 NCAC 05B .1904 REQUESTS FOR QUOTATIONS
01 NCAC 05B .1905 GENERAL CORRESPONDENCE

History Note: Authority G.S. 143B-10(f);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1987.

01 NCAC 05B .1906 APPLICATIONS FOR ADDITION TO MAILING LIST
01 NCAC 05B .1907 TERM CONTRACTS

History Note: Authority G.S. 143B-10(f);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Temporary Repeal Eff. February 15, 1998 (1 NCAC 5B .1906);
Repealed Eff. April 1, 1999.

01 NCAC 05B .1908 PURCHASE ORDERS

History Note: Authority G.S. 143B-10(f);

Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1987.

01 NCAC 05B .1909 CANVASSING BID FILES

History Note: Authority G.S. 143B-10(f);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Repealed Eff. April 1, 1999.

SECTION .2000 - FORMS USED BY THE DIVISION OF PURCHASE AND CONTRACT

01 NCAC 05B .2001	APPLICATION FOR BIDDER'S MAILING LIST: FORM PC-43
01 NCAC 05B .2002	APPLICATION FOR BIDDER'S MAILING LIST ACTION: FORM PC-44
01 NCAC 05B .2003	REQUISITION FORM: PC-29
01 NCAC 05B .2004	INVITATION FOR BIDS FORM: PC-3
01 NCAC 05B .2005	INVITATION FOR BIDS: COAL DELIVERED IN BINS: FORM PC-14
01 NCAC 05B .2006	REQUEST FOR QUOTATION: FORM PC-9
01 NCAC 05B .2007	PURCHASE ORDER: FORM PC-10
01 NCAC 05B .2008	PURCHASE ORDER FOR COAL: FORM PC-124
01 NCAC 05B .2009	GENERAL CONTRACT TERMS AND CONDITIONS TC-1: FORM PC-16
01 NCAC 05B .2010	GENERAL CONTRACT TERMS AND CONDITIONS R-1: FORM PC-17
01 NCAC 05B .2011	CONTRACT CERTIFICATION: FORM PC-31
01 NCAC 05B .2012	TERM CONTRACT CERTIFICATION: FORM DA-PC-15
01 NCAC 05B .2013	COMPLAINT TO VENDOR: FORM PC-104

History Note: Authority G.S. 150B-11;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1986.

01 NCAC 05B .2014 CHANGE ORDER: FORM PC-36

History Note: Authority G.S. 150B-11;
Eff. February 27, 1979;
Repealed Eff. June 1, 1986.

SUBCHAPTER 5D - CONSULTANT CONTRACTS

SECTION .0100 - CONSULTANTS

01 NCAC 05D .0101 APPLICABILITY

The Rules in this Section and Section .0200 are applicable to all agencies except local school administrative units and Community Colleges.

The Rules in this Section and Section .0200 do not apply to contracts for attorneys employed by the North Carolina Department of Justice or by other agencies of state government pursuant to the provisions of G.S.147-17, to contracts for physicians or doctors providing direct medical care for the clientele of any state agency, to contracts entered into by the General Assembly or its special study commissions, to contracts entered into by the Institute of Government to provide or obtain consulting or advisory services, to contracts to provide services without compensation to the provider of the services or to his employing agency or to contracts entered into by a state agency pursuant to specific statutory authority which provides, in the opinion of the Governor or designee, a specific alternative procedure for the selection and award of such contracts.

*History Note: Authority G.S. 143-64.24; 147-17;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.*

01 NCAC 05D .0102 DEFINITION

Consultant services shall mean work or task(s) performed by State employees or independent contractors possessing specialized knowledge, experience, expertise and professional qualifications to investigate assigned problems or projects and to provide counsel, review, analysis or advice in formulating or implementing improvements in programs or services. This includes but is not limited to the organization, planning, directing, control, evaluation and operation of a program, agency or department.

*History Note: Authority G.S. 143-64.21;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.*

SECTION .0200 - CONTRACTING PROCEDURE FOR CONSULTANTS

01 NCAC 05D .0201 GENERAL STATEMENT OF POLICY

State agencies shall acquire consultive services only when the contract is in the best interests of the State. In acquiring such services, competition shall be sought whenever practicable as determined by the Division of Purchase and Contract. No agency which is subject to the provisions of this Subchapter may contract for services of a consultant nature except in accordance with the provisions of this Subchapter.

*History Note: Authority G.S. 143-64.21;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.*

01 NCAC 05D .0202 CONSULTING CONTRACTS WITH OTHER AGENCIES

Whenever possible consultant services shall be obtained from other agencies when the services available from other agencies substantially meet the reasonable specifications of the requesting agency.

*History Note: Authority G.S. 143-64.22;
Eff. February 1, 1976;*

*Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.*

01 NCAC 05D .0203 REQUESTS FOR AUTHORITY TO CONTRACT WITH CONSULTANTS

Before receiving authorization to seek consultant services, an agency shall submit to the Division of Purchase and Contract written justification for its request for consultant services. This written justification shall at a minimum explain what services the agency desires to secure, why the work to be performed by the consultant cannot be reasonably accomplished by employees of the requesting agency, how the work to be performed relates to the proper functions of the agency, what benefits the agency expects to receive from the consultant's services, what the agency estimates to be the cost of the services sought, and what potential sources of consultant services if any the agency has identified. If the agency is requesting authority to contract for consulting services outside of State government, it shall also detail what potential sources of those services exist within State government and explain why the desired services were not available from those sources. The written justification shall be accompanied by a letter of endorsement for the proposed contract(s) from the agency head or his designee.

*History Note: Authority G.S. 143-64.21; 143-64.22;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.*

01 NCAC 05D .0204 REVIEW OF AGENCY REQUESTS

The documents submitted by agencies requesting authority to retain consultants will be reviewed by the Division of Purchase and Contract. Upon completion of this review the requesting agency will be advised, subject to such conditions as may be prescribed by the Governor or designee, to:

- (1) canvass additional sources within state government; or
- (2) solicit proposals from private contractors; or
- (3) execute a negotiated contract(s) without competitive proposals if the Division of Purchase and Contract and the Governor have determined that performance or price competition is not available or that the requirement is for an authorized cooperative project with another governmental unit(s) or a public or private nonprofit organization(s) or that the contract price is too small to justify soliciting competitive proposals; or
- (4) abandon the project for being outside the scope of the agency's responsibilities or for having insufficient benefit to the State relative to the potential expenditure of funds.

*History Note: Authority G.S. 143-64.20 to 64.22;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996; July 1, 1987.*

01 NCAC 05D .0205 COMPETITIVE PROPOSALS

(a) An agency which receives approval to solicit proposals for consultant services shall:

- (1) Prepare a request for proposals in accordance with these Rules and disseminate among prospective service providers;
- (2) Circulate the request for proposals to such sources of consultant services as may be identified by the Division of Purchase and Contract as well as all sources identified by the requesting agency;
- (3) Publicly open all proposals received at a date and time set in the request for proposals; however, in a two-step evaluation process, only the technical proposal shall be opened on the opening date. The cost proposal is opened only if the technical proposal is determined by the State to be acceptable;

- (4) Upon receipt of proposals submit a copy of each proposal received to the Division of Purchase and Contract;
- (5) Review all proposals received on the basis of evaluation criteria significantly related to the function to be performed and equally applied to all proposals received;
- (6) Submit a memorandum to the Division of Purchase and Contract citing criteria for selection and recommending contract award.

(b) The Division of Purchase and Contract shall evaluate all proposals received in accordance with the requirements of the request for proposals and shall consider the recommendations of the requesting agency. Upon completion of the Division's analysis, the Division shall forward a recommendation to the Governor. The requesting agency shall be notified in writing by the Governor or designee that all proposals have been rejected or that the agency head is authorized to execute a contract(s) with an approved service provider(s).

History Note: Authority G.S. 143-64.20 to 64.23;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.

01 NCAC 05D .0206 NEGOTIATED CONSULTANT CONTRACTS

An agency which receives authorization to enter into a negotiated contract(s) for consultant services without soliciting competitive proposals shall submit the proposed contract(s) to the Division of Purchase and Contract for review and approval prior to execution. Upon completion of this review the requesting agency shall be notified in writing by the Governor or his designee that an approved contract(s) may be executed by the agency head.

History Note: Authority G.S. 143-64.20 to 64.23;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987.

01 NCAC 05D .0207 CONSULTANT CONTRACT MODIFICATION

Any modification to an approved contract(s) shall be subject to the same approval requirements as the original contract(s). The Governor or his designee may at his option, during the process of reviewing requests for contract modifications, waive any of the provisions of .0203 of this Section.

History Note: Authority G.S. 143, Article 3C;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987.

01 NCAC 05D .0208 FORMAT

All contracts for consultant services shall be in writing and in a format approved by the Division of Purchase and Contract. Contracts must be executed by the department head in the case of the executive departments of state government, by the chief executive officer of independent boards and agencies, by the President of the University of North Carolina for contracts to which the university or any of its constituent institutions is to be a party, or by agents of above named officials who have been specifically designated by those officials and whose names and positions have been filed with the Division of Purchase and Contract and whose designation has been approved by the Division of Purchase and Contract and the Governor or his designee.

History Note: Authority G.S. 143, Article 3C;

Eff. February 1, 1976;
Readopted Eff. February 27, 1979.

01 NCAC 05D .0209 RELATIONSHIP OF CONSULTANT TO STATE

No contract for consultant services shall create an employer-employee relationship between the State of North Carolina and the consultant.

History Note: Authority G.S. 143-64.21;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.

01 NCAC 05D .0210 CONSULTANT CONTRACTS CONTRARY TO THIS SECTION

History Note: Authority G.S. 143-64.23; 143-1; 143-32;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

SECTION .0300 - SERVICE CONTRACTS

01 NCAC 05D .0301 APPLICABILITY

01 NCAC 05D .0302 EXEMPTIONS

01 NCAC 05D .0303 DEFINITIONS

History Note: Authority G.S. 143-49; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

SECTION .0400 - CONTRACTING PROCEDURE

01 NCAC 05D .0401 GENERAL POLICY STATEMENT

01 NCAC 05D .0402 JUSTIFICATION

01 NCAC 05D .0403 TASK DESCRIPTION

History Note: Authority G.S. 143-49; 143-53; 143-58;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987;
Repealed Eff. February 1, 1996.

SECTION .0500 - COMPETITIVE PROCEDURES

01 NCAC 05D .0501 GENERAL REQUIREMENTS

01 NCAC 05D .0502	SERVICES COSTING UP TO \$500.00
01 NCAC 05D .0503	SERVICES COSTING OVER \$500.00, BUT UNDER \$5,000
01 NCAC 05D .0504	SERVICES COSTING OVER \$5,000
01 NCAC 05D .0505	SINGLE SOURCE SERVICES
01 NCAC 05D .0506	RENTAL AGREEMENTS
01 NCAC 05D .0507	GROUPING OF SERVICE PURCHASES
01 NCAC 05D .0508	GENERAL CONTRACTING REQUIREMENTS
01 NCAC 05D .0509	REQUEST FOR PROPOSALS

*History Note: Authority G.S. 143-49; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. August 1, 1988; July 1, 1987; January 1, 1985;
Repealed Eff. February 1, 1996.*

SECTION .0600 - CONTRACTUAL AND CONSULTANT SERVICE FORMS

01 NCAC 05D .0601	FORM PC-288: CONSULTANT SERVICES REFERRAL SHEET
01 NCAC 05D .0602	FORM PC-289: CONSULTANT SERVICES APPROVAL FORM
01 NCAC 05D .0603	FORM PC-290: APPLICATION FOR BIDDER'S MAILING LIST

*History Note: Authority G.S. 150B-11;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1986.*